

*final
draft*

RESOLUTION NO. 04-09

A RESOLUTION AUTHORIZING THE ISSUANCE OF RAIL SERVICE REVENUE BONDS, SERIES 2004 (PANHANDLE RAIL LINE ACQUISITION PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,000,000 FOR THE PURPOSE OF ACQUIRING THE PANHANDLE RAIL LINE, AND AUTHORIZING A TRUST AGREEMENT, A BOND PURCHASE AGREEMENT, AN OFFICIAL STATEMENT, AN OPERATING AGREEMENT, AND RELATED DOCUMENTS AND INSTRUMENTS.

WHEREAS, pursuant to the Lease Agreement (as defined in Section 1), this Commission is leasing the Panhandle Rail Line from Caprail; and

WHEREAS, pursuant to the Lease Agreement, this Commission has an option to purchase the Panhandle Rail Line; and

WHEREAS, this Commission is authorized, with the approval of the Controlling Board, to acquire rail property of a railroad corporation; and

WHEREAS, the Controlling Board has approved this Commission's acquisition of the Panhandle Rail Line (as defined in Section 1) in the manner contemplated by this Resolution; and

WHEREAS, the Act (as defined in Section 1) authorizes this Commission to issue revenue bonds to finance the acquisition of rail property, and to enter into a trust agreement and other related documents in connection with the issuance of such bonds; and

WHEREAS, the Act authorizes this Commission to lease rail property to others for the continuation and operation of rail service;

NOW, THEREFORE, BE IT RESOLVED by the Ohio Rail Development Commission, that:

Section 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Resolution, unless the context or use clearly indicates another or different meaning or intent:

"Act" means Chapter 4981 of the Ohio Revised Code.

"Authorized Denominations" means \$100,000 or \$100,000 plus any whole multiple of \$5,000.

"Bond proceedings" means, collectively, this Resolution, the Trust Agreement, the Certificate of Award, if any, and such other proceedings of this Commission, including the Bonds,

that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

"Bond Register" means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

"Bond Reserve Fund" means the fund by that name established by this Resolution and applied as provided in the Trust Agreement.

"Bond Reserve Requirement" means that amount determined by the Secretary-Treasurer in the Certificate of Award that is equal to the lesser of 10% of the proceeds of the Bonds determined in accordance with Section 148(d) of the Code or maximum Bond Service Charges due in the current or subsequent Fiscal Year. The Bond Reserve Requirement may be provided for by deposit of moneys or Eligible Investments or by a Credit Support Instrument or by any combination of the foregoing.

"Bonds" means the Rail Service Revenue Bonds, Series 2004 (Panhandle Rail Line Acquisition Project) as authorized in Section 2.

"Bond Service Fund" means the fund by that name established by this Resolution and applied as provided in the Trust Agreement.

"Book entry form" or *"book entry system"* means a form or system under which (a) the ownership of book entry interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by this Commission only to a Depository or its nominee as registered owner, with the Bonds "immobilized" in the custody of the Depository or its designated agent. The book entry maintained by others than this Commission is the record that identifies the owners of book entry interests in those Bonds and that principal and interest.

"Caprail" means CAPRAIL I, INC., a corporation organized pursuant to the laws of the State.

"Certificate of Award" means the certificate authorized by Section 6(a), to be executed by the Secretary-Treasurer, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Resolution requires or authorizes to be set forth or determined therein.

"Closing Date" means the date of physical delivery of, and payment of the purchase price for, the Bonds.

"Code" means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor

section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Commission” means the Ohio Rail Development Commission created pursuant to Chapter 4981 of the Ohio Revised Code, or any successor to the Commission.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of book entry interests in Bonds or the principal of and interest on Bonds, and to effect transfers of Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Director of Budget and Management” means that officer of the State, appointed pursuant to Section 121.03 of the Ohio Revised Code, who administers and is the executive head of the Office of Budget and Management created pursuant to Section 121.02 of the Ohio Revised Code.

“Executive Director” means the Executive Director of this Commission.

“Fiscal Year” means a period of 12 consecutive months commencing on the first day of July of any year and ending on the last day of June of the following year.

“4N4 Fund” means the 4N4 Fund created by the General Assembly in the custody of the Treasurer of the State, or any successor fund thereto for which appropriations shall be sought pursuant to Section 9(f).

“Interest Payment Dates” means April 15 and October 15 of each year that the Bonds are outstanding, commencing October 15, 2004.

“Lease Agreement” means the Lease Agreement dated as of April 15, 1992 between Caprail and this Commission, as successor to the Ohio Department of Transportation.

“Operating Agreement” means the Operating Agreement between this Commission and the Columbus & Ohio River Rail Road authorized by Section 11.

“Original Purchaser” means Seasongood & Mayer, LLC, Cincinnati, Ohio.

“Outstanding Certificates” means the outstanding Certificates of Participation, Series 1992 (Panhandle Rail Line Project) that represents proportionate interests in the rent paid by this Commission pursuant to the Lease Agreement.

“Panhandle Rail Line” means the approximately 160 miles of rail line from Columbus, Ohio to Mingo Junction, Ohio leased to this Commission pursuant to the Lease.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies, and clearing corporations.

"Principal Payment Dates" means April 15 in each of the years from and including 2005 to and including 2012.

"Purchase Agreement" means the Bond Purchase Agreement between this Commission and the Original Purchaser authorized by Section 6.

"Redemption Fund" means the fund by that name established by this Resolution and applied as provided in the Trust Agreement.

"Replacement and Improvement Fund" means the fund by that name established by this Resolution and applied as provided in the Trust Agreement.

~~*"Revenue Fund"* means the fund by that name established by this Resolution and applied as provided in the Trust Agreement.~~

"Rule" means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

"SEC" means the Securities and Exchange Commission.

"Secretary-Treasurer" means the Secretary-Treasurer of this Commission.

"State" means the State of Ohio.

"Trust Agreement" means the Trust Agreement between this Commission and the Trustee authorized by Section 4.

"Trustee" means J.P. Morgan Trust Company, National Association, as the initial trustee, authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Trust Agreement and until a successor Trustee shall have become such pursuant to the provisions of the Trust Agreement and, thereafter, "Trustee" shall mean the successor Trustee.

The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Resolution unless otherwise indicated.

Section 2. Authorized Principal Amount and Purpose; Application of Proceeds. It is necessary for the operation of rail services that this Commission acquire the Panhandle Rail Line. Furthermore, it is necessary and in this Commission's best interest to issue the Bonds in an aggregate principal amount not to exceed \$6,000,000 for the purpose of (i) paying costs of acquiring the Panhandle Rail Line, (ii) funding the Bond Reserve Fund, and (iii) paying costs of issuance of the Bonds. The total principal amount of Bonds to be issued (not to exceed \$6,000,000) shall be the amount certified by the Secretary-Treasurer in the Certificate of Award. The Bonds shall be issued pursuant to the Act and this Resolution.

The proceeds of sale of the Bonds shall be allocated and deposited as follows and in the following order:

- (a) To the Bond Service Fund, any accrued interest paid by the Original Purchaser;
- (b) To the provider of a policy for bond insurance, if any, the amount necessary to pay the premium for a bond insurance policy on the bonds;
- (c) To the Trustee in its capacity as the trustee pursuant to the trust agreement securing the Outstanding Certificates, an amount sufficient, together with other amounts available for that purpose, to exercise the option to purchase the Panhandle Rail Line pursuant to the Lease Agreement and to defease the trust agreement securing the Outstanding Certificates; and
- (d) To the Bond Reserve Fund, an amount equal to fully fund the Bond Reserve Requirement for the Bonds; and
- (e) The balance, to the Revenue Fund to be applied to pay costs of issuance of the Bonds.

The proceeds of the sale of the Bonds are appropriated and shall be used for the purpose for which those Bonds are issued as provided in this Resolution and the Trust Agreement.

Section 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Bonds shall be issued in one lot and only as fully registered bonds, in the Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of the date determined the by Secretary-Treasurer in the Certificate of Award, provided that the dated date shall not be more than thirty (30) days prior to the date of delivery of the Bonds.

(a) Interest Rates. The Bonds shall bear the rate or rates of interest per year (computed on a 360-day per year basis consisting of twelve 30-day months), as shall be determined by the Secretary-Treasurer, subject to subsection (c) of this Section, in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) Principal Payment Schedule. The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Secretary-Treasurer, subject to subsection (c) of this Section, in the Certificate of Award, consistent with his determination of the best interest of and financial advantages to this Commission.

Consistent with the foregoing and in accordance with his determination of the best interest of and financial advantages to this Commission, the Secretary-Treasurer shall specify in the Certificate of Award the aggregate principal amount of Bonds to be issued.

(c) Condition for Establishment of Interest Rates and Principal Payments. The true interest cost for the Bonds shall not exceed five and one-half percent (5-1/2%). "True interest cost" as used in this paragraph means the rate, computed on a semiannual basis necessary to discount all payments of principal and interest on the Bonds to the aggregate original purchase price of the Bonds, exclusive of any accrued interest. The principal amounts of the Bonds to be payable on the Principal Payment Dates shall be such that the highest total principal and interest payments on the Bonds in any Fiscal Year in which principal is payable shall not exceed the lowest total principal and interest payments in any Fiscal Year in which principal is payable by more than 210%.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in accordance with the provisions of the Trust Agreement.

(e) Redemption Provisions. The Bonds shall be subject to extraordinary mandatory redemption prior to stated maturity for the purpose and in the manner described in the Trust Agreement, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest on the Bonds to be redeemed to the redemption date.

Section 4. Execution and Authentication of Bonds; Appointment of Trustee. The Bonds shall be signed by either James E. Betts or Larry C. Sowers if either or both are approved by the Speaker of the State House of Representatives and the President of the State Senate, in the name and on behalf of this Commission and in his official capacity, and the seal of this Commission shall be affixed or printed upon each Bond and attested by the Secretary-Treasurer of this Commission in his official capacity, provided that either or both of the signatures and the seal may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Secretary-Treasurer, shall be numbered as determined by the Secretary-Treasurer in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Resolution.

J.P. Morgan Trust Company, National Association is appointed to act as the initial Trustee. The Secretary-Treasurer shall sign and deliver, in the name and on behalf of this Commission, the Trust Agreement between this Commission and the Trustee, in substantially the form as is now on file with this Commission. The Trust Agreement is approved, together with any changes or amendments that are not inconsistent with this Resolution, are not substantially adverse to this Commission and are approved by the Secretary-Treasurer, all of which shall be conclusively evidenced by the signing of the Trust Agreement or amendments thereto by the Secretary-Treasurer. The Secretary-Treasurer shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Trust Agreement, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Purchase Agreement, from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Trustee as authenticating agent. Authentication by the Trustee shall be

conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Trustee or by any other person acting as an agent of the Trustee and approved by the Secretary-Treasurer on behalf of this Commission. The same person need not sign the certificate of authentication on all of the Bonds.

Section 5. Registration; Transfer and Exchange; Book Entry System.

(a) Bond Register. So long as any of the Bonds remain outstanding, this Commission will cause the Trustee to maintain and keep the Bond Register in accordance with the provisions of the Trust Agreement.

(b) Transfer and Exchange. The Bond shall be exchanged and transferred in accordance with the provisions of the Trust Agreement.

(c) Book Entry System. Notwithstanding any other provisions of this Resolution, if the Secretary-Treasurer determines in the Certificate of Award that it is in the best interest of and financially advantageous to this Commission, the Bonds may be issued in book entry form in accordance with the provisions of this Section.

The Bonds may be issued to a Depository for use in a book entry system and, if and so long as a book entry system is utilized, (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent; (ii) the book entry interest owners of Bonds in book entry form shall not have any right to receive Bonds in the form of physical securities or certificates; (iii) ownership of book entry interests in Bonds in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of book entry interests shall be made only by book entry by the Depository and its Participants; and (iv) the Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by this Commission.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Secretary-Treasurer and the Trustee may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Secretary-Treasurer and the Trustee do not or are unable to do so, the Secretary-Treasurer and the Trustee, after making provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and shall cause Bond certificates in registered form to be authenticated by the Trustee and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of this Commission's action or inaction, of those persons requesting such issuance.

The Secretary-Treasurer and the Trustee are hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of this Commission,

that the Secretary-Treasurer determines to be necessary in connection with a book entry system for the Bonds.

Section 6. Sale of the Bonds.

(a) To the Original Purchaser. The Bonds are sold at private sale to the Original Purchaser at a purchase price, not less than 98% of the aggregate principal amount thereof, as shall be determined by the Secretary-Treasurer in the Certificate of Award, plus accrued interest on the Bonds from their date to the Closing Date, and shall be awarded by the Secretary-Treasurer with and upon such other terms as are required or authorized by this Resolution to be specified in the Certificate of Award, in accordance with law, the provisions of this Resolution and the Purchase Agreement.

The Secretary-Treasurer shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. Each member of this Commission, the Executive Director, the Secretary-Treasurer and other Commission officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Resolution.

The Secretary-Treasurer shall sign and deliver, in the name and on behalf of this Commission, the Purchase Agreement in substantially the form as is now on file with this Commission, providing for the sale to, and the purchase by, the Original Purchaser of the Bonds. The Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this Resolution, are not substantially adverse to this Commission and are approved by the Secretary-Treasurer, all of which shall be conclusively evidenced by the signing of the Purchase Agreement or amendments thereto by the Secretary-Treasurer.

(b) Primary Offering Disclosure -- Official Statement. The preliminary official statement of this Commission relating to the original issuance of the Bonds substantially in the form now on file with this Commission is approved. The distribution and use of that preliminary official statement is hereby approved. The Executive Director and the Secretary-Treasurer are each authorized and directed to complete and sign on behalf of this Commission, and in their official capacities, that preliminary official statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent on behalf of this Commission, that the revised preliminary official statement is a "deemed final" official statement (except for permitted omissions), and that the revised official statement, is a final official statement, as of their respective dates, for purposes of SEC Rule 15c2-12(b)(1), (3) and (4).

Those officers are each further authorized to use and distribute, or authorize the use and distribution of, the final official statement and supplements thereto in connection with the original issuance of the Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of this Commission, and in their

official capacities, such certificates in connection with the accuracy of the final official statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

(c) No Provision for Continuing Disclosure. Neither this Commission nor any obligated person (as defined in the Rule) with respect to the Bonds will provide the financial information and operating data listed in paragraph (b)(5)(i) of the Rule, and the Original Purchaser must avail itself of the exemption provided in paragraph (d)(1) of the Rule that limits sales of the Bonds to no more than 35 persons each of whom the Original Purchaser reasonably believes (i) has such knowledge or experience in financial and business matters that it is capable of evaluating the merits and risks of investing in the Bonds and (ii) is not purchasing the Bonds for more than one account or with a view toward distributing or reselling the Bonds.

(d) Application for Rating or Bond Insurance. If, in the judgment of the Secretary-Treasurer, the filing of an application for (i) a rating on the Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Bonds, is in the best interest of and financially advantageous to this Commission, the Secretary-Treasurer is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating or policy, except to the extent paid by the Original Purchaser in accordance with the Purchase Agreement, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

Section 7. Security for the Bonds. The Bonds shall be special obligations of this Commission. To the extent provided in and except as otherwise permitted by the Trust Agreement, the Bond Service Charges (as defined in the Trust Agreement) shall be payable equally and ratably solely from the Net Revenues and the Pledged Funds (each as defined in the Trust Agreement), and the payment of Bond Service Charges on the Bonds shall be secured (i) by the Trust Agreement and (ii) by a pledge and assignment of and a lien on the Net Revenues and the Pledged Funds. However, any pledge or assignment of or lien on any fund, account, receivables, revenues, money or other intangible property not in the custody of the Trustee shall be valid and enforceable only to the extent permitted by law.

This Commission covenants that it will promptly pay from such sources the Bond Service Charges on every Bond issued under the Trust Agreement at the places, on the dates and in the manner provided in this Resolution, the Trust Agreement and the Bonds, according to the true intent and meaning thereof.

Nothing in this Resolution, the Bonds or the Trust Agreement shall constitute a general obligation debt or tax-supported bonded indebtedness of this Commission or the State; the general resources of this Commission or the State shall not be required to be used, and neither the general credit nor taxing power or full faith and credit of this Commission are or shall be pledged, for the performance of any duty under this Resolution, the Trust Agreement or the Bonds. Nothing in this Resolution gives the holders of Bonds, and they do not have, the right to have excises or taxes levied by this Commission or the State for the payment of Bond Service Charges or Operating Expenses (as defined in the Trust Agreement), but the Bonds are payable solely from the Net

Revenues and the Pledged Funds, as provided in this Resolution and the Trust Agreement, and each Bond shall contain a statement to that effect; provided, however, that nothing shall be deemed to prohibit this Commission, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Trust Agreement, this Resolution or the Bonds.

Section 8. Establishment of Funds; Application of Revenues. The funds further described or referred to in the Trust Agreement, including without limitation, the Revenue Fund, the Bond Service Fund, the Bond Reserve Fund, the Replacement and Improvement Fund and the Redemption Fund shall be and hereby are established and shall be applied as provided in the Trust Agreement. Each Fund shall be maintained in the custody of the Trustee, as provided in the Trust Agreement. Certain Net Revenues (as defined in the Trust Agreement) and other money and funds as described in the Trust Agreement shall be deposited in, and disbursed from, those funds and accounts in them as provided in the Trust Agreement.

Section 9. Covenants of this Commission. This Commission, by issuance of the Bonds, covenants and agrees with their holders to perform its applicable covenants and agreements set forth in this Resolution and in the Trust Agreement. This Commission particularly covenants that it will:

(a) Operate the Panhandle Rail Line as a revenue producing rail line under the Act, including all extensions thereof and improvements thereto.

(b) Subject to applicable requirements and restrictions imposed by law, at all times prescribe and charge such rates, charges and rentals for the services and facilities of the Panhandle Rail Line, and so restrict Operating Expenses (as defined in the Trust Agreement), as shall be necessary in order to meet the earnings coverage and other requirements of the Trust Agreement.

(c) Segregate, for accounting purposes, the Revenues and the Funds (each as defined in the Trust Agreement) from all other revenues and funds of the this Commission.

(d) At any and all times, cause to be done all such further acts and things and cause to be signed and delivered all such further instruments as may be necessary to carry out the purpose of the Bonds and this Resolution or as may be required by the Act, and comply with all requirements of law applicable to the Panhandle Rail Line and its operation.

(e) Observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Trust Agreement, the Purchase Agreement, this Resolution, the Bonds and any Bond Proceedings (as defined in the Trust Agreement).

(f) Use its best efforts to provide, and to submit to the Director of Budget and Management and the Controlling Board any necessary requests, that amounts appropriated for the 4N4 Fund for the biennium ending June 30, 2005 be reappropriated or permitted to be used as provided in Section 5.05 of the Trust Agreement, and, so long as the Bonds are outstanding, to include in its proposed budget to the Director of Budget and Management for each State biennium budget commencing with the biennium that begins on July 1, 2005, as a separate line, an

appropriation from the 4N4 Fund an amount equal to the highest Bond Service Charges due in either of the Fiscal Years in that biennium to be used as provided in Section 5.05 of the Trust Agreement; provided, however, for the biennium commencing July 1, 2011, the amount of the appropriation to be included in the Commission's budget may be reduced by the amount on deposit in the Bond Reserve Fund on April 30, 2011.

Each of those obligations is binding upon this Commission, and upon each officer or employee of this Commission as from time to time may have the authority under law to take any action on behalf of this Commission that may be necessary to perform all or any part of that obligation, as a duty of this Commission and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

Section 10. Federal Tax Considerations. This Commission covenants that it will (i) restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, and to take such action as may be necessary, after taking into account reasonable expectations at the time the Bonds are issued, so that the Bonds will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Sections 103(b)(2) and 148 of the Code, and (ii) to the extent possible, comply with all applicable provisions of the Code in order for the interest on the Bonds to remain exempt from federal income taxes, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. The Secretary-Treasurer and any other officer of this Commission is authorized and directed to give an appropriate certificate of this Commission for inclusion in the Bond Proceedings (as defined in the Trust Agreement), setting forth the facts, estimates, circumstances and reasonable expectations pertaining to the use of the proceeds of the Bonds and the provisions of Sections 103(b)(2) and 148 of the Code.

Section 11. Operating Agreement. It is in the best interest of this Commission and the State to enter into the Operating Agreement to provide for the efficient operation of the Panhandle Rail Line. The Operating Agreement in the form now on file with this Commission is approved, and the Executive Director is authorized to sign and deliver, in the name of and on behalf of this Commission, the Operating Agreement with such changes therein or amendments thereto that are not inconsistent with this Resolution, are not substantially adverse to this Commission and are approved by the Executive Director, all of which shall be conclusively evidenced by the signing of the Operating Agreement by the Executive Director.

Section 12. Other Documents. The Executive Director, the Secretary-Treasurer and any member, officer or employee of this Commission are authorized to execute and deliver, on behalf of this Commission, such other certifications, documents and instruments as are necessary or proper in connection with the acquisition of the Panhandle Rail line, the issuance of the Bonds and the other transactions contemplated by this Resolution and the Trust Agreement, and to do all other things required or permitted of them or this Commission pursuant to this Resolution and the Trust Agreement.

Section 13. Other Determinations. This Commission determines that all acts and conditions necessary to be performed by this Commission or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of this Commission

have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law.

Section 14. Compliance with Open Meeting Requirements. This Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this Resolution were taken in an open meeting of this Commission and that all deliberations of this Commission and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 15. Effective Date. This Resolution shall be in full force and effect immediately upon its passage.

Passed this 8th day of July, 2004.

Chairman

ATTEST: _____
Secretary-Treasurer

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